

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

MARION CADDELL

§

v.

§ CIVIL ACTION NO. 6:09cv534

DIRECTOR, TDCJ-CID

§

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
AND ENTERING FINAL JUDGMENT

The Petitioner Marion Caddell, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the legality of his conviction. This Court ordered that the matter be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Caddell was convicted on March 14, 2007, of the offense of delivery of a controlled substance, receiving a sentence of life imprisonment. He took a direct appeal, and the Sixth Judicial District Court of Appeals affirmed his conviction on February 7, 2008. Caddell did not seek discretionary review, but did seek state habeas corpus relief, which was denied without written order by the Texas Court of Criminal Appeals on September 2, 2009.

In his federal habeas corpus petition, Caddell complained that he received ineffective assistance of counsel and that his attorney had a conflict of interest. The Magistrate Judge ordered the Respondent to answer the petition, and the Respondent filed a motion to dismiss arguing that Caddell's petition is barred by the statute of limitations. Caddell did not file a response to the motion.

After review of the pleadings, the Magistrate Judge issued a Report on March 11, 2010, recommending that the motion to dismiss be granted and that the petition be dismissed with prejudice. The Magistrate Judge also recommended that Caddell be denied a certificate of appealability *sua sponte*. Caddell filed objections to the Magistrate Judge's Report on March 29, 2010; however, these objections only discuss the merits of Caddell's ineffectiveness claim, and make no mention of the statute of limitations. His objections are without merit.

The Court notes that Caddell's objections are entitled "Amended Notice of Appeal with Motion for Permission to File Second or Successive Writ." The first sentence says "the applicant Marion Caddell argue and offer into an evidence an objection against the Magistrate Judge Judith K. Guthrie," but then goes on to request permission to appeal to the Fifth Circuit and the U.S. Supreme Court.

At the time that Caddell filed his objections, there was no final judgment, and he cannot appeal the Report of the Magistrate Judge to the Fifth Circuit. Trufant v. Autocon, Inc., 729 F.2d 308, 309 (5th Cir. 1984). For this reason, Caddell's pleading has been construed as objections to the Report rather than as a notice of appeal. He may file a notice of appeal within 30 days after the entry of final judgment, as per Rule 4, Fed. R. App. P.

The Court has conducted a careful *de novo* review of the pleadings in this case, the Report of the Magistrate Judge, and the Petitioner's objections thereto. Upon such *de novo* review, the Court has concluded that the Report of the Magistrate Judge is correct and that the Petitioner's objections are without merit. It is accordingly

ORDERED that the Petitioner's objections are overruled and that the Report of the Magistrate Judge is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Respondent's motion to dismiss (docket no. 11) is GRANTED and that the above-styled application for the writ of habeas corpus be and hereby is DISMISSED with prejudice. It is further

ORDERED that the Petitioner Marion Caddell is hereby DENIED a certificate of appealability *sua sponte*. Finally, it is

ORDERED that any and all other motions which may be pending in this cause are hereby DENIED.

So ORDERED and SIGNED this 5th day of April, 2010.

A handwritten signature in black ink, appearing to read "LEONARD DAVIS", is written over a horizontal line. The signature is fluid and cursive, with a large loop on the left and a smaller flourish on the right.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**